

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
CENTRAL DIVISION

UNITED STATES OF AMERICA)	
)	
v.)	No. 4:17CR00293-45 BSM
)	
MARCUS O. MILLSAP)	

**UNITED STATES' RESPONSE IN OPPOSITION TO MOTION TO CORRECT
CLERICAL ERROR IN JUDGMENT**

The United States of America, by and through Jonathan D. Ross, United States Attorney for the Eastern District of Arkansas, Liza Brown and Stephanie Mazzanti, Assistant United States Attorneys for said district, submits its response to defendant Marcus O. Millsap's Motion to Correct Clerical Error in Judgment.

In his motion, Millsap asserts that at the sentencing hearing, the Court granted Millsap's request for pretrial jail credit for time spent in United States Marshals custody since February 2019, citing page 18 of the sentencing transcript. The following exchange occurred:

MR. CURRY: Yes, Your Honor. We also ask that Mr. Millsap be given credit for time served. He's been in the marshal's custody since February of 2019. We'd also ask for a recommendation to BOP that Mr. Millsap be given for credit for time served on the underlying offenses while he was in state prison.

THE COURT: Okay. All right.

(Sent. Tr. 18). At no time during the hearing did the Court state that it was running the sentence in the federal case concurrent to any state sentence, nor did the Court award credit under the United States Sentencing Guidelines. Defense counsel simply requested that a recommendation to the Bureau of Prisons be made by the Court.

Consistent with defense counsel's request that the Court make a recommendation to the Bureau of Prisons, in the section on the judgment regarding "recommendations to the Bureau of Prisons," the Court noted "Credit for time served." Pursuant to 18 U.S.C. § 3585(b)(2), the Bureau of Prisons cannot apply credit for custody time that has been previously applied to Millsap's state sentence. Thus, although the Court made a recommendation to the Bureau of Prisons, as requested by defense counsel, the statute controls.

Contrary to Millsap's argument, the judgment is consistent with the request of defense counsel and the oral pronouncement at the sentencing hearing; therefore, there was no clerical error and the Court should deny the motion.

Respectfully submitted,

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